

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: Chad Martinelli
Attorney (San Diego), Communications, Technology, and Media
(Large Business & International)

from: Kari Fisher
Assistant to the Branch Chief, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)

subject: Requirements of § 1.263A-3(c)(5)(ii)(D)

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

When does a retail customer have to be physically present at a sales facility for a sale to constitute an on-site sale within the meaning of § 1.263A-3(c)(5)(ii)(D) of the Income Tax Regulations?

CONCLUSION

A sale is an on-site sale when the retail customer is physically present at the sales facility at any point during the sales transaction.

GENERIC FACT PATTERNS

Retailer sells goods to retail customers from Sales Facility, its physical store. While physically present at Sales Facility, retail customers may select, inspect, purchase, or take possession of the goods in connection with sales transactions.

Situation 1.

Retail Customer physically visits Sales Facility to select, inspect, and purchase goods. Retail Customer takes possession of these goods at the time of purchase.

Situation 2.

Retail Customer physically visits Sales Facility to select and inspect goods. While physically present at Sales Facility, Retail Customer fills out a purchase order form agreeing to pay for the goods upon delivery. Retail Customer pays for the goods from Sales Facility when the goods are delivered.

Situation 3.

Retail Customer selects and purchases goods over the internet from Sales Facility. Retail Customer physically visits Sales Facility to inspect and take possession of these goods.

Situation 4.

Retail Customer selects goods advertised in a catalog and orders these goods by mail from Sales Facility. Retail Customer does not physically visit Sales Facility at any time to select, inspect, purchase, or take possession of these goods. The purchased goods from Sales Facility are delivered to Retail Customer.

LAW

Section 263A(a) of the Internal Revenue Code and § 1.263A-3(c)(1) generally require a taxpayer that acquires property for resale (reseller) to capitalize the acquisition cost of, and the indirect costs that are properly allocable to, property acquired for resale.

The indirect costs most often incurred by resellers are purchasing, handling, and storage costs. However, a reseller is generally not required to capitalize handling and storage costs attributable to property sold in on-site sales. Sections 1.263A-3(c)(4)(i) and (c)(5).

Section 1.263A-3(c)(5)(ii)(D) defines on-site sales as sales made to retail customers physically present at a facility. For example, mail order and catalog sales are made to customers not physically present at the facility, and thus, are not on-site sales.

Section 1.263A-3(c)(5)(ii)(E)(1) defines a retail customer as the final purchaser of the merchandise.

ANALYSIS

Situation 1.

The sale is an on-site sale because Retail Customer is physically present at the store, Sales Facility, to select, inspect, purchase, and take possession of the goods.

Situation 2.

The sale is an on-site sale because Retail Customer is physically present at Sales Facility to select and inspect the goods as well as fill out a purchase order form for the goods. Retail Customer pays for the goods upon delivery from Sales Facility.

Situation 3.

The sale is an on-site sale because Retail Customer is physically present at Sales Facility to inspect and take possession of the goods selected and purchased at an earlier time.

Situation 4.

The sale is not an on-site sale because Retail Customer is not physically present at Sales Facility at any point during the sales transaction.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call John Oldak at (202) 622-4970 if you have any further questions.